

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6171 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHALCHANDRA CHHOTALAL JOSHI

Versus

S.R.RAO, DIST. DEV. OFFICER, BHARUCH & ORS.

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Appearance:

MR HM PARIKH for Petitioner

MR HL JANI for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/03/97

ORAL JUDGEMENT

1. The question which arises for the consideration of this Court is whether this Court should exercise its extraordinary power under Article 226 of the Constitution to protect the petitioner who has taken the law in his own hands and put an agricultural land in use for non-agricultural purposes for manufacturing of bricks.

2. The petitioner could have prayed for grant of

N.A. permission and thereafter on grant of the permission, he could have put the agricultural land for use of manufacturing of bricks and for digging soil for the purpose of manufacturing of bricks. Contrary to it, the petitioner has exhibited himself to be a law breaker, a person who has no respect to law. He started to dig the soil for the purpose of manufacturing of bricks. However, the authorities, herein the respondents, have taken a lenient view in the case of a law breaker and post-facto N.A. permission has been granted for a period of three years from 1981-82 under sec. 66 of the Bombay Land Revenue Code. However, while granting the indulgence, the authority has directed the petitioner to pay Rs.10240/- as an amount of premium. The petitioner was not satisfied with that order and he has filed an appeal, but the said appeal came to be dismissed under the order dated 25th November, 1983. The matter has not ended here, but the petitioner was still not satisfied with the order of the appellate authority and he has taken up the matter to the government in revision, which came to be dismissed on 14th May, 1984. Hence, this Special Civil Application.

3. Shri Parikh, the learned counsel for the petitioner contended that the respondent No.1 has committed illegality in passing the order of payment of premium of Rs.10240/- while granting the N.A. permission to the petitioner. The respondents have no authority whatsoever to call for the premium from the petitioner while granting the post-facto N.A. permission. The counsel for the petitioner further contended that the order could have been made for summary eviction of the petitioner and of penalty, but no order could have been passed for the payment of premium.

4. On the other hand, the counsel for the respondents contended that all the three authorities below have not committed any illegality whatsoever in making the orders. It has next been contended that the authorities have taken a lenient view in the matter. Otherwise for the illegal excavation of the soil from the agricultural land, the petitioner could have been ordered to be summarily evicted and the penalty also could have been imposed. All the three authorities concurrently held against the petitioner, and as such, the counsel for the respondents contended that this Court should not interfere in the matter under Article 226 or 227 of the Constitution of India.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

The petitioner admittedly put the land in dispute for non-agricultural purposes i.e. for manufacturing of bricks and for digging soil for the purpose of manufacturing of bricks without prior permission as required under sec.65 of the Code, 1879. It is not the case of grant of permission for use of agricultural land to non-agricultural purposes, but it is a case where the petitioner prayed for regularisation of the use of agricultural land for non-agricultural purposes. This case clearly falls under sec.67 of the Code, 1879, which reads as under:

67. Permission may be granted on terms. Nothing in sections 65, 65A and 66 shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in behalf by the Government.

6. The petitioner has approached to the competent authority for post-facto permission for use of agricultural land for non-agricultural purposes. Sec. 67 of the Code, 1879, provides for grant of the permission in such cases on such terms or conditions as may be prescribed by the Collector though subject to any rule made in this behalf by the Government. The counsel for the petitioner has failed to refer any rule, which provides for non-levy of the premium. For the illegal action of the petitioner to use the agricultural land for non-agricultural purpose without prior permission, he should have been ordered to be summarily evicted from the land as well as further penalty could have been imposed, but under sec.67 of the Code, 1879, the Collector has considered the matter, and he has granted the permission which is a post-facto permission on the condition that the petitioner shall pay Rs.10240/- as an amount of premium. Neither sec.67 of the Code, 1879, nor any rule prohibits of putting of the condition for payment of the amount of premium in a case where the Collector on the application of the occupant grants permission for non-agricultural use of the land under the aforesaid section. All the three authorities have decided the matter against the petitioner, and I do not find any illegality in the orders of the authorities which calls for any interference of this Court sitting under Article 226 or 227 of the Constitution of India.

7. The counsel for the petitioner, relying on the rules 101 and 110 contended that the premium of Rs.10240/- could not have been charged from the petitioner, but having glance to these two rules, I am satisfied that the Collector was competent to impose the

premium while dealing with the matter under sec.67 of the Code, 1879, and it is not the case of the petitioner that the amount as imposed under the aforesaid section could not have been more than Rs.10,000/- or as imposed in the present case.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. The petitioner has been protected by grant of interim relief by this Court on a condition to deposit the sum of Rs.2500/-. Though it is not on record whether this amount was deposited or not, but it is a fact that the balance amount i.e. Rs.10240/- minus Rs.2500/- i.e. Rs.7740/- remained under stay for all these years. The petitioner is a businessman and he has drawn the benefit of this amount by retaining the same though under the interim order granted by this Court, but the respondents have suffered loss on this amount and the petitioner has earned profit on this amount. The petitioner, undisputedly, is a businessman and in view of this fact, the petitioner is directed to pay interest on the amount which remained unpaid at the rate of 12% p.a. with effect from 1-2-1985 till the payment thereof. The petitioner is further directed to pay the balance amount of the premium and the interest thereon, as ordered above, within a period of three months from today. The petitioner is further directed to pay Rs.1000/- by way of costs of this Special Civil Application. The counsel for the respondents has no objection in case this cost is ordered to be deposited with the Bar Council of Gujarat in the Advocates' Welfare Fund. Order accordingly. The petitioner is directed to deposit Rs.1000/-, costs as awarded to the respondents in this Special Civil Application, in the office of the Bar Council of Gujarat in the account of Advocates' Welfare Fund within a period of three months from today and the receipt of deposit of the amount shall be filed on the record of this Special Civil Application. It shall be open to the Secretary, Bar Council of Gujarat, to take appropriate legal action in case the petitioner fails to deposit the amount of costs as ordered aforesaid. A copy of this order may be sent to the Secretary, Bar Council of Gujarat, at Ahmedabad.

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